

Introduced by Senator Speier

February 22, 2005

An act to add Article 6.5 (commencing with Section 110806) to Chapter 5 of Part 5 of Division 104 of the Health and Safety Code, relating to food.

LEGISLATIVE COUNSEL'S DIGEST

SB 611, as introduced, Speier. Meat and poultry recalls.

The existing Sherman Food, Drug, and Cosmetic Law establishes requirements for the identification and branding of food, and provides for the administration of those requirements by the Food and Drug Branch of the State Department of Health Services, and, upon request of local agencies, for the administration of certain requirements by local health officers. Violation of this law is a crime.

This bill would require a meat or poultry supplier, distributor, broker, or processor that sells a meat- or poultry-related product in California that is subject to a voluntary recall requested or issued by the United States Department of Agriculture (USDA) to immediately notify the State Department of Health Services and to provide the department with a list of retailers that have received or will receive any product subject to recall that the supplier, distributor, broker, or processor has handled or anticipates handling.

The bill would authorize the department to notify appropriate local health officers and environmental health directors that a supplier, distributor, broker, processor, or retailer in the local jurisdiction has handled or received, or anticipates handling or receiving, a meat- or poultry-related product that is subject to a voluntary recall requested or issued by the USDA.

If the department makes that notification, the bill would require the department, local health officers, and environmental health directors

to notify the public regarding recalled meat- and poultry-related products. The bill would prohibit notification from being made in the case of USDA Class III recalls. By creating additional duties for local government, this bill would impose a state-mandated local program.

By changing the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Food recalls are voluntary and federal agencies responsible
4 for food safety have no authority to compel companies to carry
5 out recalls—with the exception for the Food and Drug
6 Administration's (FDA) authority to require a recall for infant
7 formula.

8 (b) In January 2004, the President of the United States
9 identified the nation's food system as vulnerable to intentional
10 acts of terrorism (Homeland Security Presidential
11 Directive\HSPD-9 Defense of United States Agriculture and
12 Food (January 30, 2004).

13 (c) According to the United States Government Accountability
14 Office's (GAO) analysis of recalls in its October 2004 report on
15 "Food Safety: USDA and FDA Need to Better Ensure Prompt
16 and Complete Recalls of Potentially Unsafe Food," only 38
17 percent and 36 percent of recalled food was ultimately recovered
18 in recalls overseen by USDA and FDA, respectively.

1 (d) According to the same GAO report, “the USDA and FDA
2 do not know how promptly and completely the recalling
3 companies and their distributors and other companies are
4 carrying out recalls, and neither agency is using its data systems
5 to effectively track and manage its recall programs.”

6 (e) In 2002, the State Department of Health Services signed a
7 Federal Memorandum of Understanding (MOU) with the USDA,
8 which prevents state and local health officials from properly
9 notifying the public that recalled products are potentially harmful
10 and should not be consumed.

11 (f) For example, health officers were advised during the
12 USDA recall of beef issued last December that due to the MOU,
13 data about which retailers had received the potentially
14 contaminated product could not be revealed to the consumer, no
15 matter the seriousness of the outbreak.

16 (g) The State Department of Health Services has subsequently
17 attempted to revise the current MOU, but has received no
18 response from the federal government.

19 (h) Continued weaknesses in our current voluntary system for
20 monitoring food recalls heighten the risk that unsafe food will
21 remain in the food supply and ultimately be consumed.

22 (i) It is the intent of the Legislature to improve food recall and
23 public notification procedures in the event of a USDA meat or
24 poultry recall and protect California consumers from potential
25 contamination in the event of a serious food outbreak.

26 SEC. 2. It is the intent of the Legislature that this act shall
27 apply only to voluntary recalls requested or issued by the United
28 States Department of Agriculture.

29 SEC. 3. Article 6.5 (commencing with Section 110806) is
30 added to Chapter 5 of Part 5 of Division 104 of the Health and
31 Safety Code, to read:

32
33 Article 6.5. Recalled Food
34

35 110806. (a) A meat or poultry supplier, distributor, broker, or
36 processor that sells a meat- or poultry-related product in
37 California that is subject to a voluntary recall requested or issued
38 by the United States Department of Agriculture shall
39 immediately notify the State Department of Health Services and
40 shall provide the department with a list of retailers that have

1 received or will receive any product subject to recall that the
2 supplier, distributor, broker, or processor has handled or
3 anticipates handling. The list shall include all pertinent
4 identifying codes, including establishment numbers, package
5 codes, product codes, pack dates, and lot numbers, if any,
6 received or to be received, and any other relevant information.
7 The information shall be electronically submitted to the
8 department in a spreadsheet format specified by the department,
9 and shall include, but not be limited to, a complete product
10 distribution list of the recalled product, for each retailer,
11 including product ship date, amount of product shipped and
12 amount of any product returned.

13 (b) The department may, after receiving the information
14 required by subdivision (a), notify appropriate local health
15 officers and environmental health directors, as soon as
16 practicable, that a supplier, distributor, broker, processor, or
17 retailer in the local jurisdiction has handled or received, or
18 anticipates handling or receiving, a meat- or poultry-related
19 product that is subject to a voluntary recall requested or issued by
20 the United States Department of Agriculture. The department
21 shall, if it makes the notification authorized by this subdivision,
22 provide appropriate local health officers and environmental
23 health directors with each supplier's, distributor's, broker's,
24 processor's, or retailer's name, address, contact information,
25 affected product identifying codes, including establishment
26 numbers, package codes, product codes, pack dates, and lot
27 numbers, if any, and all other supply chain information available.
28 The department shall not provide the notification authorized in
29 this subdivision for a United States Department of Agriculture
30 Class III recall.

31 (c) If the department makes the notification authorized by
32 subdivision (b), the department, local health officers, and
33 environmental health directors shall notify the public in a manner
34 local health officers, in consultation with the department and
35 environmental health directors, deem appropriate regarding
36 recalled meat- and poultry-related products based on their
37 determination that the retailer is present within the local
38 jurisdiction and has received or made the product available to the
39 public. The department, local health officers, and environmental

1 health directors shall not provide this notification for a United
2 States Department of Agriculture Class III recall.

3 SEC. 4. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution for
5 certain costs that may be incurred by a local agency or school
6 district because, in that regard, this act creates a new crime or
7 infraction, eliminates a crime or infraction, or changes the
8 penalty for a crime or infraction, within the meaning of Section
9 17556 of the Government Code, or changes the definition of a
10 crime within the meaning of Section 6 of Article XIII B of the
11 California Constitution.

12 However, if the Commission on State Mandates determines
13 that this act contains other costs mandated by the state,
14 reimbursement to local agencies and school districts for those
15 costs shall be made pursuant to Part 7 (commencing with Section
16 17500) of Division 4 of Title 2 of the Government Code.